Analysis of the Legislation on Mass Media in effect in the Left Bank Region of the Republic of Moldova

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Translation from Russian

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Contents

Introduction

[1] Research was drafted by Mr. Evghenii Goloşceapov (reads as [*yevgheniy goloshcheapov*]), LL.M. in International Human Rights Law (University of Essex, UK), lawyer, independent expert in human rights.

1. This study contains an analysis of the compliance of certain provisions of the Left Bank region's of the Republic of Moldova legislation[2] on the freedom of expression with the standards (norms) of the international human rights law. The legal provisions covered by this study concern the establishment, registration, re-registration and termination of activity of mass media and a number of areas closely related to the freedom of expression of mass media.

2. Other issues related to the legislation concerning public associations, as well as the issues of practical implementation of this legislation are not within the scope of this study.

3. As far as it is known, studies of this kind have not previously been published; therefore this work is the first study presenting a detailed and comprehensive analysis of the aforementioned aspects of the Left Bank region's legislation.

4. This study does not claim to be an exhaustive analysis of the examined legislation. Other studies may raise other issues as well as extend the analysis of the issues raised in this work. It would be useful to study the practice of the authorities' implementation of the legislation analysed in this work.

5. The Left Bank region's normative acts contained in publicly available sources were used in order to run the study. A comparative analysis of the Left Bank's normative acts with the standards of the international human rights law was the main method of study. The sources of international law used in the study included international treaties on human rights applied in Europe, general principles of human rights, the documents of intergovernmental organisations and of their bodies, as well as the works of the most qualified specialists in international human rights law.

6. The first part of the study provides an overview and description of international standards in the field of freedom of expression. The key international standards for this study are the provisions of Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and of Article 10 of the European Convention on Human Rights and

[2] The study is devoted to the analysis of legislation in the sphere of mass media that is in force on the territory of the left bank of the river Dniester, also known as "Transdniestrian Moldavian Republic", "TMR", "self-proclaimed Transdniestrian Moldavian Republic" and "Transdniestria" ["Pridnestrovskaya Moldavskaya Respublica" or "Pridnestrovie" in Russian]. However, no territorial disputes or questions about the status of this territory are within the scope of this study, since it is focused on the analysis of the legal issues regarding mass media only. For this very reason, in order to distance ourselves from political aspects, the term used in this study is the maximally neutral of all possible – "Left Bank region". While quoting normative acts the terms used there were either left unchanged or omitted without prejudice to the meaning.

The study analyses the legislation that *de facto* exists and is applied in the Left Bank region and is different from the legislation that is in force in the Right Bank region.

Nothing in this study should be understood or interpreted as recognition or non-recognition of any status of the Left Bank region, or challenging of the territorial integrity of the Republic of Moldova.

Fundamental Freedoms (ECHR). These standards also contain criteria for justified interference (*restrictions*) on the freedom of expression.

7. The second part of the study is the most voluminous and substantial in terms of comparative analysis. It analyses in detail the provisions of the Constitution and of other normative acts of the Left Bank region concerning the establishment, registration, re-registration and liquidation of mass media in terms of compliance with international standards. Thus, the following provisions are analysed:
   - On the possibility to become founder of a media outlet and restrictions in this sphere;
   - On the mass media registration procedure;
   - On the payment of the State duty: payment of the State duty is a part of registration, but this aspect required a special attention, because its analysis required us to study a large number of normative acts and to take into consideration other details;
   - On refusal to register mass media;
   - On the cases of re-registration of mass media – this procedure is similar to the registration of mass media;
   - On the possibility of legal action and appeal in case of refusal to register and re-register;
   - On the termination of activity of mass media on the grounds specified in the Law on Mass Media and in the Law on Counteraction to Extremist Activities.

8. In addition, the second part of the study also presents a brief analysis of such issues as licensing of radio and television, the use of languages, censorship, prevention of media monopolisation, and defamation. These issues can considerably influence the possibility of mass media to freely enjoy the freedom of expression and to perform their functions.

9. The third part of the study opens with general conclusions and recommendations regarding the analysed legislation. Further, it contains a summary of the main conclusions, which were made in the course of study concerning certain provisions of the legislation on mass media. For a correct and complete understanding of the main conclusions they should be read and examined together with the arguments presented in the second part of the study.

10. This study is primarily intended for persons engaged into the lawmaking in the Left Bank region and into the work with the Left Bank region in the field of legislation. The study can also be of interest for founders of media outlets, journalists, employees of international and intergovernmental organisations, researchers, students, teachers and other persons interested in the standards of international human rights law and legislation in the field of freedom of expression and of mass media.

1. Brief Overview of International Standards in the sphere of Freedom of Expression

1.1. Key International Standards

11. The right to freedom of expression (also known as "freedom of opinion" and "freedom of speech") is a cornerstone political human right along with the freedom of association and the freedom of assembly. The main international standards (norms) of human rights relating to this right are contained in key international and regional human rights instruments, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights (ECHR)).

12. Thus, Article 19 of the UDHR[3] states that:

> "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

13. The provisions of the ICCPR[4] further developed and refined the norms if the UDHR. In particular, Article 19 of the ICCPR states the following:

> "1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

14. The ICCPR provisions are interpreted and developed in the decisions of the UN Human Rights Committee (UNHRC, HRC, or Committee) and the General Comments adopted by the HRC. The HRC practice on the freedom of expression is quite developed. The developed character of the Committee practice on this article and the importance of the freedom of expression are also confirmed by the fact that the Committee not only adopted General Comments on Article 19 of the ICCPR, but also considerably broadened them

[3] The Universal Declaration of Human Rights, adopted by resolution 217 A (III) of the UN General Assembly on 10 December 1948, <http://www.un.org/en/documents/udhr/>, <http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml>.

[4] International Covenant on Civil and Political Rights, adopted by the UN General Assembly resolution 2200A (XXI) on 16 December 1966, entered into force 23 March 1976, <http://www2.ohchr.org/english/law/ccpr.htm>, <http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml>.

later: in 1983 the Committee adopted General Comment no. 10 on Article 19,[5] and in 2011 it replaced them with the latest to date General Comment no. 34.[6]

15. Article 10 "Freedom of Expression" of the ECHR also contains provisions on the freedom of expression:[7]

> "1.Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

16. The European Court of Human Rights (ECtHR or the Court) has the authority to interpret and develop the provisions of the ECHR, which it makes in its judgments on applications sent to the ECtHR. The Court's jurisprudence on the freedom of expression is well developed as the Court examined a large number of applications under Article 10 and issued judgments on them.

17. Also, several other UN treaties and documents issued by the institutions of the Council of Europe (Committee of Ministers, PACE) and the OSCE clarify the standards of the right to freedom of expression. References to these documents will be made below, if necessary.

1.2. Brief Description of International Standards

18. It should be noticed that the international standards (norms) of human rights, including the ones provided for in Article 19 of the ICCPR and Article 10 of the ECHR, protect not only the *content* of opinions, ideas and information. These articles also protect the *means* by which they can be transmitted, disseminated, and received. The list of means that are under protection includes various mass media: newspapers, radio, television, and electronic media.[8] This approach is also explained by the fact that, in the opinion of the UNHRC, "a

[5] UNHRC, General Comment no 10 - Article 19 (freedom of expression), 19th session (1983), <http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2bb2f14bf558182ac12563ed0048df17?Opendocument>.
[6] UNHRC, General Comment no 34 – Article 19 (freedom of opinion and expression), 102nd session, Geneva, 11-29 July 2011, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR-C-GC-34.doc>.
[7] European Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocols No.11 and No.14) on 04 November 1950, entered into force on 3 September 1953, (commonly known as the European Convention on Human Rights (ECHR)), <http://coe.ru/main/echr/>, <http://conventions.coe.int/treaty/en/treaties/html/005.htm>.
[8] M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (Kehl, N.P. Engel, 1993), p. 342.

free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights", and it is "one of the cornerstones of a democratic society."[9] In its turn, the ECtHR shares this approach and considers that the media is a "watchdog" of public interests; it is necessary for a "healthy functioning of democracy", exposing actions of the government to the public control.[10]

19. The word *"freedom"* in the right to freedom of expression indicates that individuals are able to exercise this freedom themselves without any actions from the part of authorities. Accordingly, this human right is primarily a *negative right* and the authorities have a *negative obligation* – not to interfere into the exercise of this freedom. However, as we know from the theory of human rights, the authorities have three types of obligations in respect of each human right, whether it is negative or positive: *to respect, to protect, to fulfil*.[11] With regard to the freedom of expression, these obligations will, above all, mean the following:
    - To respect, i.e. the authorities themselves must not interfere into the exercise of this freedom;
    - To protect this freedom from the interference of third parties;[12]
    - To fulfil, i.e. to develop and adopt the minimum of legal norms necessary for the protection of the freedom of expression, establishment and operation of various media outlets.

20. However, freedom of expression is not an absolute right. Article 19 of the ICCPR and Article 10 of the ECHR are providing for essentially identical grounds for the *restriction* of this freedom under certain conditions. In accordance with these provisions, any interference is justified if it meets the following criteria:
    1) It is prescribed by law;
    2) It should serve the protection of one of the legitimate aims listed in Article 19 (3) of the ICCPR or Article 10 (2) of the ECHR:

ICCPR, Article 19 (3)	**ECHR, Article 10 (2)**
• for respect of the rights or reputations of others, • for the protection of national security, • of public order (ordre public), • of public health or morals.	• in the interests of national security, • territorial integrity or • public safety, • for the prevention of disorder or crime, • for the protection of health or morals, • for the protection of the reputation or rights of others, • for preventing the disclosure of information received in confidence, or • for maintaining the authority and impartiality of the judiciary.

[9] See above, UNHRC, General Comment no. 34 – Article 19 (freedom of expression), para 13.
[10] D. Harris, M. O'Boyle, C. Warbrick, Law of the European Convention on Human Rights, 2nd edition (New-York, Oxford University Press, 2009), p. 465.
[11] P. Hunt, Reclaiming Social Rights: International and Comparative Perspectives (Dartmouth, Ashgate, 1996), pp. 31-34.
[12] See above, M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, p. 340.

3) It is necessary in a democratic society: the word "necessary" requires that the intervention be consistent with a "pressing social need" and "proportionate to the legitimate aim pursued".[13]

[13] *Freedom and Democracy Party (Özdep) v. Turkey*, Application no. 23885/94, ECHR judgment of 08 December 1999, para. 43.

2. The Analysis of Selected Aspects of the Left Bank Region's Legislation on Mass Media regarding its Compliance with International Standards

2.1. Constitutional Norms and Field-Specific Legislation

21. Article 27 of the Constitution[14] is devoted to the freedom of expression:
> "Everyone has the right to the freedom of thought, speech, and opinion. Everyone has the right to seek, receive and impart any information by any lawful means, except the information directed against the existing constitutional order or the one constituting state secret. The list of information constituting state secret shall be defined by law. Everyone is guaranteed freedom of ideas, opinions, and their free expression."

22. Article 28 of the Constitution[15] is devoted to mass media and censorship:
> "Mass media are not subject to censorship."

23. Thus, the Constitution contains provisions protecting the freedom of expression. And although Article 27 of the Constitution does not directly mention mass media, the freedom of expression covers and protects them, too. Firstly, as it has been shown above, international human rights standards (norms) protect mass media as *means* by which opinions, ideas and information can be sought, imparted and received. Secondly, the word "everyone" in Article 27 of the Constitution indicates that this freedom can be enjoyed by any persons, both natural and legal. Thirdly, Article 28 of the Constitution is devoted to prohibition of censorship in mass media, i.e. it acknowledges the importance of the freedom of expression for mass media.

24. Article 27 of the Constitution contains two provisions relating to restrictions of the freedom of expression. The freedom of expression can be restricted 1) if the search for, receipt, and imparting of information are directed against the existing constitutional order, or 2) if the information constitutes state secret.

25. Both reasons for restriction of the freedom of expression listed in Article 27 of the Constitution can in principle be considered consistent with international standards, as both reasons can be among such legitimate aims behind restriction of the freedom of expression as "protection of national security" (ICCPR, Article 19 (3)) or "interests of national security" (ECHR, Article 10 (2)). However, the application of these restrictions must also comply with the criterion of "necessity in a democratic society."

26. Article 18 of the Constitution is devoted to the possibility of restricting human rights, which is "allowed only in cases prescribed by law, in the interests of State security, public order, and protection of morals, health, rights and freedoms of others."

[14] The Constitution of the Transdniestrian Moldavian Republic was adopted in a national referendum of 24 December 1995, signed by the President on 17 January 1996, as amended in accordance with the changes introduced by Constitutional Law 310-КЗИД of 30 June 2000.
[15] Ibidem.

27. Such wording relating to restrictions is inconsistent with international standards. Firstly, in contradiction to Article 19 of the ICCPR and Article 10 of the ECHR, Article 18 of the Constitution contains only a two-step test and does not include the element requiring restrictions to be "necessary in a democratic society". Secondly, Article 18 of the Constitution extends the possibility to impose restrictions on all human rights enshrined in the Constitution. However, different human rights have different grounds for their limitation. For example, the right to liberty and security of person is subject to other limitations. Moreover, for a number of human rights no limitations are allowed, for example, freedom from torture, prohibition of holding a person in slavery or servitude, the right to a fair trial.

28. Thus, the Constitution enshrines the right to the freedom of expression. However, not all constitutional restrictions of this freedom fully meet international standards.

29. Besides the Constitution, specialized legislation is functioning in the Left Bank region regulating the issues of establishment, registration, re-registration and liquidation of mass media, particularly the Law on Means of Mass Communication (hereinafter Law on Mass Media).[16]

30. The norms of this and other laws will be analysed below regarding their compliance with international standards on human rights related to the establishment, registration, re-registration and liquidation of associations, and to some other aspects in the operation of mass media.

2.2. Founders

31. Article 19 of the ICCPR and Article 10 of the ECHR guarantee the freedom of expression for "everyone."[17] Thus, these international treaties guarantee the freedom of expression to all persons, including not only natural persons, regardless of citizenship, but legal persons as well. However, these international standards allow for the exercise of the freedom of expression to be subject to certain formalities, conditions, and restrictions. Some of these formalities, conditions and restrictions are related to the requirements for founders of media outlets in the Left Bank region.

[16] Law on Means of Mass Communication as of 11 April 2003, N 263-3-III (САЗ 03-15), with amendments and additions as of 07 May 2007, 16 May 2007, 31 July 2007, 24 October 2007, 06 November 2007, 03 October 2008, and 18 June 2009.

[17] In the Russian text of Article 10 of the ECHR the word "каждый" ("everyone") is used, and in the Russian text of Article 19 of the ICCPR the phrase "каждый человек" ("every individual") is used. When comparing with the English versions of these documents, one can see that they both use the word "everyone", which is translated as "каждый". So, the text of Article 19 of the ICCPR in Russian narrows down unjustifiably the scope of the freedom of expression and recognises it only for people, i.e. individuals. However, it contradicts the English text, in which the freedom of expression is guaranteed to all persons, not only individuals, but also legal entities.

32. On the one hand, founder of a media outlet can be any "person", i.e. both natural and legal,[18] including commercial enterprises and public associations,[19] religious organisations[20] and political parties.[21] Besides, a founder can also be a group of persons – co-founders,[22] as well as central and local authorities.[23]

33. On the other hand, the Law on Mass Media contains as series of restrictions of the possibility to become founder of a media outlet. Thus, according to Article 8 (3) of the Law on Mass Media, a founder cannot be:
    "a) A citizen who has not attained the age of eighteen, or one who is serving a sentence in prison upon court conviction, or one whom the court has found legally incapable;
    b) An organization whose activity has been prohibited by law;
    c) A citizen of a foreign country, a stateless person, a person not permanently residing in the Transdniestrian Moldavian Republic."

34. As for restricting the possibility to be founder of a media outlet for citizens under the age of 18 or the ones whom the court found legally incapable, these restrictions can be considered justified in the point that for the purposes of public order founders of media outlets must be fully capable persons.

35. The general restriction of the possibility to be founder of a media outlet for all citizens servicing prison sentences under court conviction is more controversial. The question appears about the necessity of such a general ban. Thus, if a citizen is servicing a sentence for a crime that is closely related to the dissemination of certain prohibited ideas (e.g. appeals to racial, ethnic, religious or other hatred), banning the possibility to become founder of a media outlet while servicing the sentence can be justified. In other cases this ban may cause reasonable doubt, as it might be inconsistent with justified limitations (the three-step test) of the freedom of expression.

36. Restriction of the possibility to be founder of a media outlet for an organisation whose activity has been legally banned is seemingly related to the fight against extremism. At the very least, the Law on Counteraction to Extremist Activities[24] contains a prohibition on publishing and disseminating official information of "banned extremist organisations",[25] "prohibition on publishing in the media of any information on behalf of a banned organisation",[26] and "prohibition on disseminating … information of a banned organisation".[27] It is necessary that the prohibition of an organisation's activity be subject to judicial review and that this decision be consistent with the justified limitations of the

[18] See above, Law on Mass Media, Article 8 (1).
[19] Law on Public Associations of 4 August 2008, no. 528-З-IV (СА3 08-31), with amendments and additions as of 05 June 2009, 30 December 2009, 22 July 2010 and 11 May 2011; Article 30 (1) letter d).
[20] Law on the Freedom of Conscience and Religious Organisations of 19 February 2009, no. 668-З-IV (СА3 09-8), with amendments and additions as of 30 December 2009 and 22 July 2010; Article 20 (2).
[21] Law on Political Parties as of 28 January 2000, no. 239-З (СЗМР 00-1), with amendments and additions as of 30 May 2006, 22 November 2006, 12 June 2007 and 09 June 2009; Article 23 (1), Article 25 (1).
[22] See above, Law on Mass Media, Article 8 (1) and (4).
[23] See above, Law on Mass Media, Article 8 (2).
[24] Law on Counteraction to Extremist Activities as of 27 July 2007, no. 261-З-IV (СА3 07-31).
[25] Ibidem, Article 13 (1) letter a).
[26] Ibidem, Article 17 (2) letter b).
[27] Ibidem, Article 17 (2) letter d).

freedom of expression and (or) the freedom of association in the presence of convincing evidence of the fact that the ban of this organisation's activity is truly necessary. At that, it is important to ensure fairness of the trial.

37. The fight against various forms of extremism is by itself an urgent and necessary task in many countries, a fact that has been emphasized, for example, in Resolution 1754 (2010) adopted by the Parliamentary Assembly of the Council of Europe (PACE).[28] This activity is necessary, as many forms of extremism are in conflict with the values of democracy and human rights, and often even allow the use of violence or directly contribute to it. However, in the case of the Left Bank region, the problem may be in the fact that the Law on Counteraction to Extremist Activities contains quite an extensive definition of extremism.[29] It leads to the possibility of a wide interpretation of legal provisions and, therefore, to the possibility of abuse and unacceptable restriction of the freedom of expression and the freedom of association, including the ban of activity of various organisations.[30, 31]

38. The latest restriction on the possibility to be founder of a media outlet was introduced for foreign citizens and for stateless persons who do not reside permanently in the Left Bank region. This provision imposes a dual restriction on the freedom of expression: by the criterion of citizenship (for foreigners and stateless persons) in conjunction with the criterion of place of residence ("not residing permanently") on the territory of the Left Bank region. Full ban for these persons on the possibility to be founders of media outlets will most probably be inconsistent with international standards, as it is unclear for the protection of which legitimate aims this ban was introduced, and it will unlikely be consistent with the criterion of "necessity in a democratic society."

39. One can assume that the authorities consider that the protection of a legitimate aim (here authorities will have to explain which aim exactly) requires banning foreigners and stateless persons who do not permanently reside in the region from owning media outlets on the territory of the Left Bank region. However, in this situation, too, such full ban will be inconsistent with the criterion of "necessity in a democratic society", as authorities will surely be able to protect the goals pursued through measures that are less restrictive of the freedom of expression. For example, authorities might introduce the requirement that the above persons be allowed to only be co-founders of media outlets, and they might establish the size of the maximum share or the nominal capital that can be owned by the aforementioned persons in founded media outlets in order to avoid full control over these media by these persons.

[28] PACE Resolution 1754 (2010) Fight against extremism: achievements, deficiencies and failures, 5 October 2010, para. 1, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1754.htm#1>.
[29] See above, Law on Counteraction to Extremist Activities, Article 1 (a).
[30] Amnesty International Report «Russian Federation: Freedom limited – the right to freedom of expression in Russia», 26 February 2008, Index: EUR 46/008/2008, pp. 17-26, <http://www.amnesty.org/en/library/asset/EUR46/008/2008/en/c9539ec6-3848-4f5e-a07e-89bafac1152c/eur460082008eng.pdf>.
[31] Доклад Хьюман Райтс Вотч «Гражданское общество в антигражданских обстоятельствах: безосновательные ограничения независимой общественной активности», июнь 2009, стр. 48-53, <www.hrw.org/sites/default/files/reports/russia0609ruwebwcover.pdf> // Human Rights Watch report "An Uncivil Approach to Civil Society: Continuing State Curbs on Independent NGOs and Activists in Russia", June 2009, Russian edition, pp. 48-53.

40. Besides, it should be mentioned that citizens of the Left Bank region who do not permanently reside in the region are not forbidden to found media outlets. Commercial enterprises with foreign capital and joint ventures are also allowed to found media outlets. Therefore, the criterion of the place of residence and citizenship of a foreign country are not applied consistently, a fact that also raises the issue of necessity of the examined restriction.

2.3. Registration

41. In the view of the UNHRC, "issues related to the registration and/or re-registration of mass media fall within the scope of the right to freedom of expression protected by Article 19" of the ICCPR.[32] In its turn, the ECtHR also noted that Article 10 of the ECHR protects not only the content of information and ideas but also the means of their dissemination, since any restriction on the means necessarily interferes with the right to receive and impart information.[33, 34]

42. As it has already been mentioned, the exercise of the freedom of expression can be subject to certain formalities and conditions. These formalities and conditions may particularly be related to the requirement of mass media registration, and these requirements must be examined in the framework of the standards of freedom of expression.

43. According to the Left Bank region's legislation, all mass media (both print and broadcast)[35] must undergo registration at the State's executive authority in the field of information.[36]

44. The issues related to registration can be assessed by several parameters, namely from the point of view of 1) accessibility of information on the registration procedure, 2) understandability of the registration procedure, and 3) predictability, feasibility and necessity of formal requirements for registration.

45. As for the *information on the registration procedure*, it is not fully accessible. On the one hand, the information on the registration procedure in contained in the Law on Mass Media.[37] On the other hand, this information has several significant gaps.

46. Firstly, the law notes that mass media must undergo registration at the "State's executive authority in the field of information,"[38] – this phrase is not the name of the authority, but just a description of its field of activity. Moreover, the Law on Mass Media does not contain any reference norms to other normative acts containing the name of this registering

[32] *Rakhim Mavlonov and Shansiy Sa'di v. Uzbekistan*, Communication no.1334/2004, UNHRC Views as of 19 March 2009, CCPR/C/95/D/1334/2004, para. 8.3.
[33] *Dzhavadov v. Russia*, Application no. 30160/04, ECtHR judgment as of 27 September 2007, para. 31.
[34] *Öztürk v. Turkey*, Application no. 22479/93, ECtHR judgment as of 28 September 1999, para. 49.
[35] See above, Law on Mass Media, Article 2 (b).
[36] Ibidem, Article 9 (1).
[37] Ibidem, Articles 9 and 10.
[38] Ibidem, Article 9 (1).

authority. Therefore, the law does not indicate the authority that must be addressed in order to register mass media, which is a significant gap in the information on the registration procedure.

47. It should be noted that the former Law on the Press and Other Means of Mass Communication, which was in force before the current Law on Mass Media, directly indicated that applications for the registration of mass media were to be submitted to the Committee on Television, Radio and Press of the Supreme Council of the Transdniestrian Moldavian Republic.[39] Thus, clear indication of the name of the registering authority in the old law and lack of such a clear indication in the current law points to a deterioration of the legislation on mass media.

48. Secondly, the application for registration must be supplemented with the "document confirming the payment of the state duty."[40] However, the law does not specify the amount of the state duty or the calculation procedure, nor does it contain reference norms to other normative acts where one could find answer to this question (further information on this issue is presented in the section "State Duty").

49. Thus, the norms for mass media registration are not concentrated in one normative act. Therefore, interested persons should have some knowledge in the field of law so as to independently find the lacking information on mass media registration. It especially applies to the calculation of the size of the duty to be paid for PA registration. Besides, although the normative acts and amendments to them are published in the Left Bank region in the "Compilations of Legislative Acts" (CLA), it appears that the region has no publicly accessible and reliable electronic database of normative acts, amendments and additions to them.[41]

50. The *registration procedure* is described in Articles 9, 10, 12 and 13 of the Law on Mass Media. In particular, the law:
    - Stipulates that the issues of mass media registration are under the jurisdiction of the "State's executive authority in the field of information" (Article 9);
    - Lists the documents required for mass media registration (Article 10);
    - Indicates the time limits for examination of the application for mass media registration (Articles 9 and 13);
    - Notes, that registration is not required for:
      "a) Mass media founded by legislative, executive and justice authorities exclusively for the publication of their official communications and materials, normative and other acts;

[39] Law on the Press and Other Means of Mass Communication as of 16 March 1993 (C3MP 93-1), Article 8 (2), became inoperative in connection with the entry into force of the Law on Mass Media as of 11 April 2003.
[40] See above, Law on Mass Media, Article 10 (2).
[41] When preparing this study we faced the problem of access to the current normative acts, amendments and additions to them. For example, the existing official legislative databases of authorities contained the texts of laws that are void, and did not contain the texts of laws that are currently in force or amendments and additions to laws.

b) Periodical print publications with a circulation of less than one thousand copies;

c) Radio and television programmes broadcast through cable networks, limited to the office and territory of one institution, educational establishment or industrial enterprise, or having ten or less subscribers." (Article 12).

51. In its Views on the case of *Laptsevich v. Belarus* the UNHRC found that the requirement to register a publication with a print run of 200 copies is a violation of the freedom of expression.[42] As it has already been shown above, the registration of mass media that are intra-organisational (disseminated within one enterprise or institution) and of those that have an insignificant circulation (less than one thousand copies for print periodicals) is not required in the Left Bank region.[43] Is must be considered a positive moment, complying with international standards.

52. The problem with the registration procedure is that the law does not specify the exact name of the authority registering mass media.[44] This problem has direct practical consequences: it is unclear which authority must be addressed to register mass media. It is quite a significant obstacle for mass media registration. The persons that lack knowledge in the field of law or structures of government authorities are unlikely to be able to independently determine the authority where they must submit applications for mass media registration. And although while examining the Left Bank region's legislation we found that as of February 2012 mass media registration and development and maintenance of the single media register were responsibilities of the State Service of Communications, Information and Mass Media,[45] it does not eliminate the above problem that exists in the current Law on Mass Media.

53. As for another aspect of the registration procedure – the terms of registration – the authority registering mass media shall adopt one of the following decisions within 15 days from submission of all the necessary documents:
    1) On the registration of mass media (at that, the formulation "decision on registration shall be adopted within fifteen days"[46] leaves unclear the fact whether the document confirming mass media registration is issued within the indicated 15 days or within some other time);
    2) On refusal to register mass media, in which case the "notification about refusal to register is sent to the applicant in written form within fifteen days from submission of the application"[47] (in this case the text of the law makes it clear that a motivated refusal must be sent within the indicated 15 days).

[42] *Laptsevich v. Belarus*, Communication no. 780/1997, Views of the UNHRC as of 20 March 2000, CCPR/C/68/D/780/1997, para. 8.1.
[43] See above, Law on Mass Media, Article 12 letters b) and c).
[44] Ibidem, Article 9 (1).
[45] Regulations on the State Service of Communications, Information and Mass Media, Article 5 letter f), approved by Government Decision no. 8 on Approval of the Regulations on the Structure and Staff Numbers of the State Service of Communications, Information and Mass Media of the Transdniestrian Moldavian Republic as of 10 February 2012.
[46] See above, Law on Mass Media, Article 9 (2.2)
[47] Ibidem, Article 13 (2).

54. Thus, the *registration procedure* as described in the Law on Mass Media appears to be not quite understandable, as the text of the law does not specify the authority where the application for registration must be submitted, and the terms of issuance of the document confirming mass media registration are not obvious; these two moments introduce uncertainty to the mass media registration procedure.

55. As for *formal requirements* for mass media registration, they are resumed to preparing and submitting the application for mass media registration and a number of additional documents to the registering authority. In particular, the law lists information that must be indicated in the application for mass media registration:

> "a) Information about founder (co-founders), according to the requirements of this Law;
> b) Name of the mass media;
> c) Language (languages);
> d) Address of the editorial office;
> e) Form of periodical dissemination of mass communication;
> f) Intended area of product distribution;
> g) Approximate topics and/or specialisation;
> h) Intended frequency of issue, maximum volume of the media, circulation (for periodicals);
> i) Sources of funding;
> j) Information on what other mass media the applicant is founder, editor-in-chief, editorial office, publisher or distributor of."[48]

56. Furthermore, the application must be supplemented by a document confirming the payment of the State duty.[49] Also, if the editorial office of the media is a legal person, the application is supplemented by a copy of the document on editorial office registration as a legal person, and if the media is a structural subdivision of a legal person – by a copy of the document on the registration of this legal person.[50] In addition, the registering authority can require a natural person to submit a document confirming his identity, and a letter of attorney to represent the interests of a natural of legal person.[51] The rules of registration end with the provision that "it is prohibited to request additional documents from the applicant if the submitted documents meet the requirements of this Article."[52]

57. In relation to the above formal requirements one can make the following conclusions. Firstly, on the one hand, the list of documents that must be submitted is closed, "if the submitted documents meet the requirements" of Article 10 of the Law on Mass Media. On the other hand, however, if the application does not include all the required information or does not present all the necessary documents, the registering authority instantly obtains the possibility to request additional documents from the applicant. And not necessarily those that are missing, but just "additional", i.e. virtually any documents. Thus, in this case the list of documents becomes open. These circumstances create a situation when the registering authority may receive unduly broad discretionary powers, and its requirements for the list of documents for mass media registration may become uncertain and

[48] Ibidem, Article 10 (1).
[49] Ibidem, Article 10 (2).
[50] Ibidem, Article 10 (3).
[51] Ibidem, Article 10 (4).
[52] Ibidem, Article 10 (5).

unpredictable. All these can significantly complicate the mass media registration procedure. In this situation it would be more appropriate to make the list of required documents absolutely closed and to make it possible to request only the missing data and documents from the number of those indicated in the Law on Mass Media.

58. Secondly, it appears that the requirement of submitting the aforementioned documents itself is practicable, but problems may appear with the document on the payment of the State duty because of some problems described below in the section "State Duty".

59. Thirdly, even if the requirements for the list of data and documents for registration are practicable, the question appears of how necessary these requirements are. In particular, the application for mass media registration must include such information as "language (languages)", "intended area of product distribution", "approximate topics and/or specialisation", "intended frequency of issue, maximum volume of the media, circulation (for periodicals)", "sources of funding."[53] New media outlets can certainly calculate and plan their activities. However, it is quite obvious that all the aforementioned data are not static; they are susceptible to changes in connection with the needs of the audience, interest for certain types of information and topics, increase of popularity or decrease of interest for the media, their financial standing, etc. Therefore this information is likely to lose its relevance in a short time. Accordingly, this fact is already reason enough to remove the requirement of submitting this information in the application for registration.

60. The Law stipulates that mass media circulation is determined by the editor-in-chief, but cannot be greater than the circulation indicated in the application for mass media registration.[54] This requirement is clearly unjustified and will be inconsistent with the criteria of justified limitation of the freedom of expression. Circulation is an internal affair, an issue of internal editorial and financial policies of mass media. It should be determined by the management of the media on the basis of market demand and editorial policy, and not be artificially limited by some statements made during mass media registration.

61. Besides, international standards are developing along the way of transition from registration (or "разрешительная регистрация" [razreshitelnaya registratsia] in Russian) of mass media to notification (or "уведомительная регистрация" [uvedomitelnaya registratsia] in Russian) about establishment of mass media. The difference between these two procedures has been accurately described in the Special Report of the OSCE Representative on Freedom of the Media: "The essential difference between the two terms is that *notification* allows a newspaper owner to inform the government of its existence, while *registration* allows the government to inform a newspaper that it may exist."[55] Leading world experts also recognise registration requirements for the print media among threats to freedom of expression.[56]

[53] Ibidem, Article 10 (1).
[54] Ibidem, Article 30 (1).
[55] Special Report of the OSCE Representative on Freedom of the Media "Registration of Print Media in the OSCE area", 29 March 2006, p. 3, <http://www.osce.org/fom/24436>.

[56] Joint Declaration "Ten key challenges to freedom of expression in the next decade" as of 3 February 2010, published in the Report of the UN Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, UN Human Rights Council, Fourteenth session, A/HRC/14/23/Add.2, p. 4.

62. In the Left Bank region a media outlet is considered registered from the day when it receives a registration certificate,[57] and also from that moment a new media outlet obtains right of publication.[58] These provisions clearly show that the Left Bank region has a permissive procedure for mass media registration, which is proposed to be replaced by notification.

2.4. State Duty

63. International standards do not forbid fees to be charged for mass media registration. The rate of such fees, though, should not serve as a barrier to a media start-up.[59] Fee payment is related to the issues of registration, therefore fee issues can be assessed according to parameters that have been used above for other aspects of mass media registration: *information about the registration procedure* must be accessible, the *procedure* itself must be easy to understand, and the *formal requirements* must be foreseeable, easy to satisfy, and they must not grant an excessively high margin of discretion to the authorities in deciding on the issue of mass media registration.

64. In the Left Bank region such fees are charged in the form of State duty. Article 14 of the Law on Mass Media stipulates that "the State registration of a media outlet is charged with State duty". Thus, the formal requirement of payment of State duty is foreseeable.

65. As for the accessibility of information about the State duty, although the requirement to pay it is contained in the Law on Mass Media, its amount in this document is not indicated. Article 14 of the Law on Mass Media contains a reference norm that the State duty is charged "in the manner and amount prescribed by the current legislation of the Transdniestrian Moldavian Republic." Therefore, the Law on Mass Media makes a general reference to the legislation of the Left Bank region as a whole, and not to a specified normative act regulating the issues of State duty payment. It is another point that complicates the mass media registration procedure.

66. While studying the Left Bank region's legislation, we found that the examined issues are regularised by the Law on State Duty.[60] The Law on State Duty itself stipulates that mass media are charged with State duty for the following actions and in the following amounts:
    1) For registration of mass media – five times the size of the points of minimum wage (PMW), including:
        a) print periodical – 5 PMW;
        b) news agency – 8 PMW;
        c) television, radio, organisation of television and radio broadcasting, televised and video programmes, newsreel programmes, other mass media – 10 PMW;

[57] See above, Law on Mass Media, Article 9 (2.2).
[58] See above, Law on Mass Media, Article 9 (3).
[59] See above, Special Report of the OSCE Representative on Freedom of the Media, p. 6.
[60] The Law on State Duty as of 30 September 2000 (as amended on 10 December 2010), no. 345-ЗИД (СЗМР 00-3).

2) When registering mass media specialized in advertising, the amount of the State duty for the corresponding media outlet is multiplied by 20 (twenty);
3) When registering mass media specialized in erotic communications and materials, the amount of State duty for the corresponding media outlet is multiplied by 30 (thirty);
4) When registering mass media specialized in production aimed at children, adolescents and persons with disabilities, as well as mass media of educational and cultural destination, the amount of the State duty for the corresponding media outlet is reduced by 2 (two) times.[61]

67. A positive aspect is that, as it is seen from the previous paragraph, when determining the amount of the State duty, the legislation differentiates between exclusively commercial and socially-oriented mass media, for which it provides a reduced amount of the State Duty.

68. At the same time, there is a problem that should be mentioned. Thus, the law stipulates that the State duty is to be paid through banks,[62] but it does not indicate the amount of 1 PMW in any currency, so as to make it possible to calculate the amount of the duty for mass media registration. Moreover, the law does not contain any reference norms to other normative acts on PMW. Therefore, it is fairly evident that a person without special knowledge in the field of law or finances will most probably be unable to independently determine the amount of the duty that is to be paid for mass media registration. Accordingly, the information about State duty payment is not accessible; therefore it is unlikely to be in compliance with international standards. [63]

69. Having studied the legislation, we found that the PMW is set annually in the yearly budget laws. Article 53 of the Law on the Republican Budget for 2012[64] sets different rates of PMW for different purposes, and apparently the rate of 1 PMW for the payment of the State duty for the registration of mass media is set at 10.5 roubles.[65] Accordingly, the size of the State duty, for mass media registration is 10.5x5=52.5 roubles, which practically equals EUR 3.56 or USD 4.69.[66] For comparison, the average wage in January-February 2012 was 3,126 roubles (about EUR 212.27 or USD 280.36), and the average cost of living was 1,210.90 roubles (about EUR 82.23 or USD 108.60).[67] In this context, it appears that the size of the State duty itself is not excessive and does not represent an obstacle for the registration of mass media.

[61] Ibidem, Article 4 (7.1.10) and Article 4 (7).

[62] Ibidem, Article 6 (1).

[63] Most likely, the interested persons are informed about the size of the State duty at the bank. However, the law must be formulated clearly and accessibly, so that anyone could with sufficient ease find in the legislation answers to these questions.

[64] Law on the Republican Budget for 2012 as of 07 December 2011, no. 227-З-V (САЗ 11-49).

[65] Ibidem, Article 53 (2) letter h).

[66] Transdniestrian Republican Bank: weighted average exchange rates in 2012, by the month: in April 2012: EUR 1 = 14.7559, USD 1 = 11.2000; <http://www.cbpmr.net/resource/svcmonthapril2012.pdf>.

[67] «Прожиточный минимум», газета «Профсоюзные вести» от 01 апреля 2012, <http://profvesti.org/2012/04/01/7905/>. // "Cost of Living", newspaper "Profsoyuznye Vesti" of 01 April 2012.

70. Generalizing the above information, it can be concluded that the size of State duty does not hinder establishment of mass media, but the issue of determining the size of the State duty is potentially inconsistent with international standards because of the inaccessibility of information about the State duty.

2.5. Refusal to Register

71. Refusal to register, which results in impossibility for mass media to operate, is an interference with the freedom of expression and its restriction. As it was noted above, interference can be considered justified only if it complies with the three-step test criteria, contained in Article 19 (3) of the ICCPR and Article 10 (2) of the ECHR. Besides, international standards do not directly prohibit the imposition of prior restraints on mass media. However, "the relevant law must provide a clear indication of the circumstances when such restraints are permissible and, *a fortiori*, when the consequences of the restraint are to block […] completely" the operation of mass media. "This is so because of the potential threat that such prior restraints, by their very nature, pose to the freedom of expression."[68]

72. According to the Law on Mass Media, within 15 days from submission of the application for mass media registration, the registering authority can refuse to register a media outlet and issue to the applicant a notification on refusal to register, indicating reasons for refusal, provided by the law.[69] It must be noted that the legislation contains the requirement for the refusal to be produced in written form and to be motivated – it is one of the important safeguards against arbitrary refusal to register a media outlet.

73. In addition, the Law on Mass Media in a number of cases provides for the possibility to return the application for mass media registration to the applicant without examination, but indicating reasons for return. At that, after correction of violations that caused return of the application, the application is accepted for examination.[70]

74. In relation to the refusal to register mass media and the return of the application for mass media registration the main question is whether the reasons, for which mass media can be refused registration, and, therefore, be unable to operate, could be regarded as justified interference with the freedom of expression. We shall consider the most problematic points related to these restrictions.

75. Firstly, mass media registration can be refused "if the application has been submitted on behalf of the citizen or organisation that has no right to establish mass media in accordance with this Law."[71] These restrictions have been examined above in the section "Founders", and the conclusions made there are applicable here as well.

[68] *Gawęda v. Poland*, Application no. 26229/95, ECtHR judgment of 14 March 2002, para. 40.
[69] See above, Law on Mass Media, Article 13 (2).
[70] Ibidem, Article 13 (3).
[71] See above, Law on Mass Media, Article 13 (2) letter a).

76. Secondly, mass media registration can be refused "if the information in the application is inconsistent with the real state of affairs."[72] This formulation can in some cases be too general and vague. Regarding such phrases the ECtHR noted the following: "A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the person to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."[73, 74]

77. Regarding such phrases, the ECtHR, for example, examined two quite similar cases: *Gawęda v. Poland* and *Dzhavadov v. Russia*. In both cases the domestic courts of Poland and Russia referred to similar provisions of their national legislation in deciding to ban the registration of newspapers and magazines whose titles, in the courts' view, were "inconsistent with the real state of affairs."[75, 76] When issuing its judgments, the ECtHR noted that requiring the title of a newspaper or magazine "to embody truthful information is inappropriate from the standpoint of freedom of the press. The title of a periodical is not a statement as such, since its function is essentially to identify the given periodical on the press market for its actual and prospective readers."[77] Furthermore, the Court has stressed that "the requirement that the title of a newspaper reflect the "real state of affairs" should be based on a legislative provision which clearly authorized it." However, in both cases the ECtHR found violations of Article 10 of the ECHR, since the interpretation of this phrase was not founded on the law, which clearly explains that this requirement must refer to the title of the publication.[78]

78. Accordingly, refusal to register mass media in case that "the information indicated in the application is inconsistent with the real state of affairs" can in some cases lead to violation of the freedom of expression.

79. Thirdly, mass media registration can also be refused "if the name, approximate topics and/or specialisation of the media outlet are an abuse of the freedom of the press in the meaning of Article 4 (1) of the Law on Mass Media."[79] In its turn, Article 4 of the Law on Mass Media, in particular, prohibits to "use mass media for the purposes of committing criminal offenses; disseminating materials containing public appeals to terrorist activities or publicly justifying terrorism; disclosing information that constitutes State or other secret protected by the law; carrying out extremist activities; and broadcasting programmes that promote pornography, cult of violence and cruelty."[80] On the one hand, authorities must protect public order, prevent disorders and crimes, and for these purposes they can limit the freedom of expression. On the other hand, it appears unlikely that authorities can with certainty draw a conclusion on "abuse of the freedom of the press" only from the data

[72] Ibidem, Article 13 (2) letter b).
[73] See above, *Gawęda v. Poland*, para. 39.
[74] See above, *Dzhavadov v. Russia*, para. 35.
[75] See above, *Gawęda v. Poland*, para. 42.
[76] See above, *Dzhavadov v. Russia*, para. 40.
[77] Ibidem, para. 40.
[78] Ibidem, paras. 39 and 40.
[79] Ibidem, Article 13 (2) letter c).
[80] Ibidem, Article 4 (1).

indicated by applicants in the application for mass media registration, i.e. from the indicated title, approximate topics and/or specialisation of mass media.

80. It appears that in case there is doubt when deciding on "abuse of the freedom of the press" by the registered media outlet, authorities should, by analogy, proceed from the standards developed for the registration of associations. Specifically, authorities should proceed from convincing and compelling reasons, and not from "mere suspicion about true intentions" of the media outlet founder.[81, 82]

81. As for reasons for returning the application for mass media registration to the applicant without examination, they are resumed to non-compliance with clearly defined formal requirements:
a) If the application was submitted in violation of requirements set in Article 10 of the Law on Mass Media (this article indicates formal requirements for the content of the application and a list of additional documents);

b) If the application on behalf of the founder was submitted by a person lacking authority to do so;

c) If the State duty for mass media registration was not paid.[83]

82. Another reason for returning the application for mass media registration can be the situation when "the registering authority previously registered a media outlet with the same title and form of distribution of mass communication."[84]

[81] *Sidiropoulos and Others v. Greece*, Application no. 57/1997/841/1047, ECtHR judgment of 10 July 1998, para 45. In this case the European Court of Human Rights examined a situation when Greek authorities refused to register a public association, which in its memorandum of association indicated that its aim was to preserve and develop traditions and folk culture of the Macedonian minority. The authorities of Greece considered that the true aim of this association was to undermine the territorial integrity of Greece by questioning the Greek identity of Macedonia (North-West part of Greece) and its residents. The Court came to the conclusion that the authorities did not present "conclusive … evidence" to support the refusal to register this public association, and that the presented evidence was not more than "mere suspicion" about true intentions of the association. Had the results of this association's activity proved that it really pursued illegal goals, the authorities could have filed an application to a court regarding its dissolution. The Court decided that refusal was disproportionate to the pursued goals and violated the applicants' freedom of association, as enshrined in Article 11 of the ECHR.

[82] In some cases the documents of an association may "conceal objectives and intentions different from the ones it proclaims". To verify that it is not the case, the content of the documents "must be compared with the actions of the party's leaders and the positions they defend". For details see case *Refah Partisi (The Welfare Party) and Others v. Turkey*, Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of the Grand Chamber of the ECtHR of 13 February 2003, para. 101.

[83] See above, Law on Mass Media, Article 13 (3) letters a) – c).
[84] Ibidem, Article 13 (3) letter d).

83. It appears that all these reasons for returning the application for mass media registration are in principle not inconsistent with international standards, and their fulfilment can be determined by the need to maintain order in society and protect the rights of others.

2.6. Re-registration

84. As it has been mentioned above, "issues related to the registration and/or re-registration of mass media fall within the scope of the right to freedom of expression" and are protected by international standards.[85] If registration is associated with appearance of the possibility to produce and release mass media, re-registration is associated with the issue of maintaining these possibilities and continuing normal operation. In this connection, re-registration should be subject to the same standards as the above-examined standards of mass media registration.

85. The Law on Mass Media provides that mass media must undergo mandatory re-registration in case of change of founder, composition of co-founders, title, language, form of periodical distribution of mass communication, area of product distribution. The application for re-registration must be submitted within one month from occurrence of the above circumstances, and re-registration itself is carried out in the same manner as registration.[86] Thereby, the conclusions made above for the mass media registration procedure are applicable for re-registration, too.

86. The only addition is that to perform mass media re-registration, the registering authority must not require mass media to repeatedly submit information or documents that did not change from the moment of initial registration. Therefore, these requirements will be unfounded, since the justice authority already has this information or documents as a result of initial registration of mass media. Thus, it can relate to the requirement of supplying the application with a copy of the document confirming the registration of the editorial office as a legal person (if the editorial office of the media outlet is a legal person), or with a copy of the document confirming the registration of the legal person (if the editorial office of the media outlet is a structural subdivision of the legal person).

87. It should be noted that the law does not require re-registration of a media outlet if it changes location of the editorial office and the frequency of product distribution. In this case the founder must only notify about it the registering authority in writing within one month.[87] It is a positive example of the fact that in some cases mass media can simply notify authorities about changes without the need of re-registration. With this in mind, it is recommended to extend the scope of simple notification to other instances of changes and to introduce re-registration by notification only in case of fundamental changes (e.g. when changing the title).

[85] See above, *Rakhim Mavlonov and Shansiy Sa'di v. Uzbekistan*, para. 8.3.
[86] See above, Law on Mass Media, Article 11 (1).
[87] Ibidem, Article 11 (3).

2.7. Appeal against Refusal to Register and Re-register

88. Judicial control is an important guarantee for preventing and combating human rights violations. In particular it applies to unreasonable refusals to register mass media and protection against them. International standards stipulate that authorities must ensure "that any person whose rights or freedoms … are violated shall have an effective remedy",[88] and that "in the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal."[89]

89. According to the Law on Mass Media, refusal to register mass media, violation by the registering authority of the procedure and terms of registration, other misconduct of the registering authority, and decision on annulling the broadcasting license can be challenged in a judicial procedure.[90] However, the Law on Mass Media provides not only for the possibility of a court decision on rectification of the violation. The law also directly indicates that should the court find the appeal justified, it also issues the judgment on the need to "repair damages, including lost income incurred by the founder, editorial office, license holder."[91]

90. Thus, legal provisions are in compliance with international standards, for they provide mass media with the possibility to challenge in court the refusals to perform various registration procedures and to request compensation for violations. It is also relevant to mention that these potential appeals to court must be easy to perform and they must be examined within a reasonable time. Should these conditions fail to be met, it may lead not only to a violation of the freedom of association, but also to a violation of the right to fair trial and effective remedy.

2.8. Termination of Activity

91. The authorities' decision leading to termination of a media outlet's activity is an evident interference with the freedom of expression and its most severe restriction. Such decisions are extreme and excessive measures. Therefore, authorities should proceed from the principle of proportionality and firstly, if necessary, apply other sanctions provided by the law, which would achieve the aim pursued but at the same time least of all restrict the freedom of expression and the activity of mass media. For example, these could be demands to correct violations or administrative or criminal prosecution of the persons who committed violations or of the association itself. As to the termination of a media outlet's activity, it should be an exceptional measure, applied in extreme cases only, when the outlet's activity leaves no other choice. The decision of termination of activity of mass media must comply with justified interference with the freedom of expression as set out in Article 19 (3) of the ICCPR and in Article 10 (2) of the ECHR, i.e. it must be prescribed by law, be necessary in a democratic society and be proportionate to the legitimate aim pursued. By analogy with the standards applicable to the freedom of association, the

[88] See above, ICCPR, Article 2 (3).
[89] See above, ECHR Article 6 (1).
[90] See above, Law on Mass Media, Article 61 (1) letters a) and b).
[91] Ibidem, Article 61 (2).

reasons for decisions on termination of activity of mass media must be particularly strong, evidently "relevant and sufficient".[92]

92. The legislation of the Left Bank region contains several actions that can lead to actual termination of activity of mass media: 1) direct termination of activity; 2) temporary suspension of activity; and 3) invalidation of mass media registration certificate.

93. Thus, the Law on Mass Media provides that the decision on termination or suspension of activity of mass media can be made either by a media outlet's founder or by court.[93] Reasons for terminating the activity of mass media by court decision are as follows:

> "a) Repeated commission of actions stipulated in Article 4 of this Law by the editorial office of a media outlet within 1 (one) calendar year;
>
> b) Failure to fulfil the requirements of the regulations issued by authorized bodies of the State government and administration;
>
> c) Failure to execute the judicial act of termination of activity of the media outlet."[94]

94. In addition, "the activity of a media outlet can also be terminated or suspended by court decision in the manner and for reasons provided by the legislation of the Transdniestrian Moldavian Republic in the field of counteraction to extremist activities."[95] Also, "the activity of a media outlet can be terminated by court as a measure of securing the claim" provided by Article 16 (1) of the Law on Mass Media.[96]

95. Grounds for terminating the activity of a media outlet that are contained in item a) make a reference to Article 4 of the Law on Mass Media. The most interesting for the purposes of this study is Article 4 (1), which says: "It is prohibited to use mass media for the purposes of committing criminal offenses; disseminating materials containing public appeals to terrorist activities or publicly justifying terrorism; disclosing information that constitutes State or other secret protected by the law; carrying out extremist activities; and broadcasting programmes that promote pornography, cult of violence and cruelty." Therefore, the activity of a media outlet can be terminated if within one calendar year its editorial office repeatedly commits actions for the aforementioned prohibited purposes.[97]

96. As for item b), it is also related to the Law on Counteraction to Extremist Activities, which provides for issuance of prescripts to mass media by the General Prosecutor[98] or his deputy (in the Law this document is called "представление" [*predstavleniye*, communication]).[99]

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[92] *United Communist Party of Turkey and Others v. Turkey*, Application No. 133/1996/752/951, ECtHR judgment as of 30 January 1998, para. 47.
[93] See above, Law on Mass Media, Article 16 (1).
[94] Ibidem, Article 16 (3).
[95] Ibidem, Article 16 (4).
[96] Ibidem, Article 16 (5).
[97] Ibidem, Article 16 (3) letter a).
[98] Such function, traditional for many jurisdictions, as "General Prosecutor" in the Left Bank region is named "Prosecutor". Here and further, to name the function of this main Prosecutor we shall use the term "General Prosecutor", so as to differentiate this function from other prosecutors.
[99] See above, Law on Counteraction to Extremist Activities, Article 8 (1).

A written communication can be issued in case of "propagation through mass media of extremist materials or detection of facts indicative of signs of extremism in their activity," and it should indicated specific reasons for which it is issued, including the committed offences. Not more than a month is given to eliminate violations.[100] Further, if this communication is not challenged in court, if no measures are taken to eliminate violations, and if within the following 12 months new signs of extremism are detected in the activity of the media outlet, the activity of this outlet is subject to termination by judicial procedure.[101] Moreover, should a media outlet conduct extremist activity containing a series of qualifying signs,[102] the activity of such an outlet can be terminated by court order upon a motion of the General Prosecutor or his deputy.[103]

97. At first glance, all these restrictions can be considered justified, since they can be necessary, for example, to protect public order and national security and to prevent crimes. However, it is always necessary to examine the last part of the three-step test regarding the need to terminate the activity of a media outlet in a democratic society and regarding this measure's adequacy in each particular case.

98. Another problem may be in the interpretation of the aforementioned prohibited goals. For example, as it has already been mentioned in the section "Founders", fight against various forms of extremism is a pressing and necessary task in many countries,[104] since many forms of extremism contradict the values of democracy and human rights, and often even admit or directly contribute to violence. Meanwhile, the Law on Counteraction to Extremist Activities contains quite an extensive definition of extremism,[105] which allows a broad interpretation of this notion and, therefore, possibility of abuse and inadmissible restriction of human rights, including violation of the freedom of expression, particularly in the form of termination of activity of mass media. Thus, ECtHR has already examined a case on similar problems, and the Court considered that there has been a violation of the freedom of association in connection with a broad interpretation of anti-extremist legislation.[106]

[100] Ibidem, Article 8 (1).
[101] Ibidem, Article 8 (4).
[102] Article 11 (2) of the Law on Counteraction to Extremist Activities indicates the following qualifying signs: carrying out of extremist activity, which resulted in "violation of human and citizens' rights and freedoms, causing harm to the person, the health of citizens, the environment, public order, public safety, property, legitimate economic interests of individuals and (or) legal entities, society and the State or poses a real threat of such harm."

[103] Ibidem, Article 11 (2).
[104] See above, PACE Resolution 1754 (2010), para. 1.
[105] See above, Law on Counteraction to Extremist Activities, Article 1 letter a).
[106] *Moscow Branch of the Salvation Army v. Russia*, Application no. 72881/01, ECtHR judgment of 5 October 2006, paras. 15, 90 – 92 and 98. In this case the European Court of Human Rights examined a situation when Russian authorities refused re-registration to the religious organisation "Salvation Army" on the grounds that anti-extremist legislation prohibits establishment of paramilitary formations in Russia. One of the immediate reasons for refusal was the authorities' statement that "Salvation Army" is a "paramilitary organization", "since its members wore uniform and performed service, and because the use of the word "army" in its name was not legitimate". In this regard the Court noted that the freedom of religion includes the forms of manifesting religious beliefs. The Court added that "for the members of the applicant branch, using ranks similar to those used in the military and wearing uniforms were particular ways of organising the internal life of their religious community and manifesting The Salvation Army's religious beliefs. It could not seriously be maintained that the applicant branch advocated a violent change in the State's constitutional foundations or thereby undermined the State's integrity or security. No evidence to that effect had been produced before the domestic authorities or by

99. Regarding such situations the UNHRC noted that such "offenses as 'encouragement of terrorism' and 'extremist activity' as well as offenses of 'praising', 'glorifying,' or 'justifying' terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression ."[107] Similar requirements should undoubtedly be applied to the definition of "extremism" and "extremist activity".[108]

100. As it has been mentioned above, the activity of mass media can be terminated in case of failure to execute "the judicial act of termination of activity of the media outlet."[109] Termination of the media in this case appears as a sanction for failure to execute a previous court order. In this regard, a more appropriate sanction might be imposition of a fine on this media outlet, since this sanction will perform the function of punishment and at the same time will be less restrictive of freedom of expression. Thus, termination of activity of the media outlet in this case can be recognised as a measure disproportionate to the goal pursued and lead to a violation of the freedom of expression.

101. The last instance of actual termination of activity of mass media is invalidation of the mass media registration certificate, which occurs exclusively by judicial procedure in cases listed in Article 15 of the Law on Mass Media:

"a) If the registration certificate has been obtained by fraud;

b) If the media outlet has not published (broadcast) for more than one year;

c) If the Statute of the editorial office or the contract serving as its replacement was not adopted and/or approved within 3 (three) months from the date of the first publication (broadcast) of this media outlet;

d) If there has been repeated registration of this media outlet."

102. Regarding item a), this reason can be considered justified, since it can be necessary for the purposes of protection of public order. This sanction will most likely be also considered proportional, in view of the fraudulent (illegal) way of mass media registration, which, however, will need to be proven.

103. The reason in item b) is similar to another provision of the Law on Mass Media, contained in Article 9 (3) of this law: "The founder of a media outlet reserves the right to

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the Government in the Convention proceedings. It follows that the domestic findings on this point were devoid of factual basis." Accordingly, the Court came to the conclusion that "the interference with the applicant's right to freedom of religion and association was not justified" and there has been a violation of Article 11 of the ECHR read in the light of Article 9.

[107] See above, UNHRC, General Comment no. 34 – Article 19, para. 46.

[108] It should be mentioned that Article 203/2 of the Penal Code as of 2002, for example, contains the notion of "public justification of terrorism": "In this Article public justification of terrorism means public statement recognizing that the ideology and practice of terrorism are correct and need support and imitation."

[109] See above, Law on Mass Media, Article 16 (3) letter c).

begin production of the media within one year from the date of receipt of the registration certificate. Should this deadline be missed, the mass media registration certificate is invalidated."

104. The following should be noted regarding these two provisions. Firstly, the question arises of whether invalidation of the mass media registration certificate in these circumstances is necessary in a democratic society. Accordingly, this reason for invalidating the certificate might be inconsistent with international standards. Secondly, Article 15 (b) indicates that invalidation of the certificate must be done by judicial procedure only. Meanwhile, Article 9 (3) indicates that a certificate is invalidated if the media outlet does not publish/broadcast for a year from the date of receipt of this certificate, but nothing is said about the judicial procedure for invalidation of the certificate. Therefore, the provisions of Article 9 (3) might mean automatic (without a court order) termination of a certificate upon occurrence of relevant circumstances. For this reason Article 15 (b) and Article 9 (3), depending on interpretation, might represent competing standards and create problems in interpretation of the law and in the activity of mass media.

105. Invalidation of the mass media registration certificate on the basis of item c) is clearly inconsistent with international standards, since this restriction of the freedom of expression is disproportionate to the aim pursued. The authorities can force a media outlet to approve the Statute or contract by demanding that such an outlet redress the situation or by imposing a fine on relevant persons – these measures will be not restrictive or less restrictive of the freedom of expression of the media and will be proportionate to the aim pursued.

106. The reason for the invalidation of the mass media registration certificate that is indicated in item d) can be considered consistent with international standards, since in this case authorities invalidate the certificate issued at repeated registration. The media outlet, meanwhile, continues operating on the basis of the certificate issued at initial registration. Therefore, there is no interference with the freedom of expression.

2.9. Licensing of Radio and Television Broadcasters

107. International standards admit the possibility of licensing radio and television broadcasters. For example, Article 10 (1) of the ECHR notes that protection of the freedom of expression under Article 10 of the ECHR "shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises." At the same time, international standards provide that licensing must comply with a series of requirements that are specified, for example, in ECtHR judgments: "As the Court has already held, […] States are permitted to regulate by a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects […]. Technical aspects are undeniably important, but the grant or refusal of a licence may also be made conditional on other considerations, including such matters as the nature and objectives of a proposed

station, its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments."[110]

108. The Left Bank region's Law on Mass Media stipulates that television and radio frequencies are the exclusive property of the State.[111] For television and radio broadcasting it is necessary to obtain a license from the "executive authority of the State in the field of information,"[112] specifically from the State Service of Communications, Information and Mass Media.[113] The broadcasting licensing procedure is regularised by the Law on Telecommunications.[114] To assess compliance of radio and television licensing in the Left Bank region with international standards, the norms of the legislation in force are not sufficient; it is also necessary to study the licensing practice, which is beyond the scope of this study.

2.10. Use of Languages in Mass Media

109. It has already been mentioned above that the international standards of human rights protect not only the *content* of opinions, ideas, and information, but also the *means* by which they can be imparted, disseminated and received. Some of such means are languages, as languages perform the function of communication between people; therefore they are means for dissemination and receipt of opinions, ideas, and information. The issues of use of languages are especially urgent in multilingual societies and for national and linguistic minorities. In this regard Article 27 of the ICCPR notes that national and linguistic minorities "shall not be denied the right, in community with the other members of their group, […] to use their own language." In addition, the UNHRC noted that "As a means to protect the rights of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media."[115]

110. The Council of Europe's Framework Convention for the Protection of National Minorities enshrines the obligation of States parties "to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media."[116] OSCE standards also emphasize that the freedom of expression of every person, particularly the persons belonging to national (including linguistic) minorities, "includes the right to receive, seek

[110] *Informationsverein Lentia and Others v. Austria*, Application No. 13914/88; 15041/89; 15717/89; 15779/89; 17207/90, ECtHR judgment, 24 November 1993, para. 32.
[111] See above, Law on Mass Media, Article 7.
[112] Ibidem, Article 32.
[113] See above, Regulations on the State Service of Communications, Information and Mass Media, Article 5 (я-2)).
[114] Law on Telecommunications as of 29 August 2008, No. 536-3-IV (СА3 08-34), as amended on 25 June 2009.

[115] See above, UNHRC, General Comment no. 34 – Article 19, para. 14.
[116] Framework Convention for the Protection of National Minorities, CoE, opened for signature 1 February 1995, entered into force 1 February 1998, Art.9(1), <http://conventions.coe.int/Treaty/EN/Reports/Html/157.htm

and impart information and ideas in a language and media of their choice without interference and regardless of frontiers."[117]

111. The Law on Mass Media contains the requirement to indicate at a media outlet's registration the language (languages) that will be used to publish/broadcast the media, but it does not regularise directly the issues of the use of languages in the media. This issue is, however, regularised by the Law on Languages in the Transdniestrian Moldavian Republic, which says the following: "In the Transdniestrian Moldavian Republic the languages of official mass media (television and radio, magazines, etc.) are Moldavian, Russian, and Ukrainian. The languages of other nationalities can also be used."[118] Thus, this law indicates the languages that must be used by official mass media, but it also provides for the possibility to use other languages. The law does not regularise the use of languages in privately owned mass media, nor does it contain mandatory languages for privately owned media or mandatory proportions for the use of languages in mass media. Thus, mass media can themselves determine the language (languages) for publication and broadcasting depending on the needs of their audience and of the media market. Besides, national and linguistic minorities can establish their own media outlets, which can publish/broadcast in their languages. Thereby, the provisions of the legislation regarding the use of languages in the media generally comply with international human rights standards.

2.11. Censorship

112. The freedom of expression is not an absolute human right, and in some cases it can be subject to certain formalities, conditions, restrictions or penalties.[119, 120] At the same time, prior censorship is prohibited by international standards.[121] Thus, the UNHRC notes that "a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights."[122] The UNHRC further underlines that "The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion."[123]

113. The Left Bank region's legislation contains several provisions prohibiting censorship. Thus, Article 28 of the Constitution directly stipulates that "mass media shall not be censored." The Law on Mass Media contains the definition of censorship, which is understood as "control by authorities over the content, release and dissemination of print production, content and performance (display) of stage productions, radio and television

[117] Guidelines on the use of Minority Languages in the Broadcast Media & Explanatory Note (Office of the OSCE High Commissioner on National Minorities, 2003), Principle 1. Published in HCNM thematic recommendations 1996 – 2008, p. 61, <http://www.osce.org/hcnm/74509?download=true
[118] Law on Languages in the Transdniestrian Moldavian Republic as of 8 September 1992 (C3PM 92-3), Article 35.
[119] See above, ICCPR, Article 19 (3).
[120] See above, ECHR, Article 10 (2).
[121] See Above, M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (Kehl, N.P. Engel, 1993), p. 345 and 349.
[122] See above, UNHRC, General Comment no. 34 – Article 19, para. 13.
[123] Ibidem, para. 13.

programmes, and sometimes private correspondence (perlustration), in order to prevent or limit the dissemination of ideas and information that authorities consider unwanted or harmful."[124] Further this law also contains a separate article on prohibition of censorship:

> "1. The censorship of mass communication, according to Article 28 of the Constitution of the Transdniestrian Moldavian Republic, is prohibited.
> 2. Establishment and funding of organisations, institutions, bodies or positions whose tasks or functions include censorship of mass communication is prohibited."[125]

114. Moreover, "identification of bodies, organisations or positions whose tasks or functions include censorship of mass communication entails immediate termination of their funding and liquidation according to the procedure provided by the legislation of the Transdniestrian Moldavian Republic."[126]

115. Therefore, the legislation contains direct prohibition of censorship, and in this sense it complies with international standards. At the same time, it would be useful to monitor the situation in practice.

2.12. Prevention of Mass Media Monopolisation

116. Private financial interests and establishment of media monopolies are just as harmful to the freedom of expression and to the free flow of information as censorship measures by governments. Therefore the States, in particular, have the positive duty to *protect* the freedom of expression, for example through measures aimed at preventing excessive media concentration.[127] Regarding media monopolisation, the UNHRC noted that "effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression ."[128] Further, the UNHRC emphasized that States "should not have monopoly control over the media and should promote plurality of the media. Consequently, States parties should take appropriate action, consistent with the Covenant, to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views."[129]

117. The Left Bank region's Law on Mass Media contains the obligation of indicating at the registration of mass media information about founders,[130] and "information about what other media outlets the applicant is founder, editor-in-chief, editorial office, editor, or distributor of."[131] In addition, establishment of a media outlet by an impostor is considered a violation of the legislation.[132] Thus, while registering mass media, authorities collect information about the founders of mass media and about their links to other registered media outlets and the media market. At the same time, the Left Bank region's legislation

[124] See above, Law on Mass Media, Article 2 (т).
[125] Ibidem, Article 3.
[126] Ibidem, Article 58 (2).
[127] See Above, M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, p. 344
[128] See above, UNHRC, General Comment no. 34 – Article 19, para. 40.
[129] Ibidem, para. 40.
[130] See above, Law on Mass Media, Article 10 (1) letter a).
[131] See above, Law on Mass Media, Article 10 (1) letter k).
[132] See above, Law on Mass Media, Article 60 (a).

apparently has no provisions on the protection of mass media against monopolisation and other above-mentioned threats. Thus, the provisions of the legislation in the field of prevention of monopolisation and inadequate concentration of mass media are inconsistent with international standards and need further development.

2.13. Defamation (Calumny)

118. Defamation (calumny) is dissemination of information discrediting honour and dignity. In many jurisdictions this action is a law infringement and even a crime, which can be punishable by imprisonment. The problem is that the legislation prohibiting defamation can in practice be used to restrict the freedom of expression,[133] and the sanctions imposed for it by authorities "are capable of discouraging the participation of the press in debates over matters of legitimate public concern."[134] Consequently, international standards contain the requirement of taking measures "to avoid excessively punitive measures and penalties", to consider the decriminalisation of defamation and to exclude imprisonment from the number of possible penalties for defamation, since it cannot be regarded as an appropriate punishment.[135]

119. The Penal Code of the Left Bank region as of 2002 recognises defamation as a criminal offence in two articles: Article 126 "Defamation" and Article 294 "Defamation against a Judge, Prosecutor, Investigator, Person Conducting Inquiry, Executor". Both articles provide for penalties raging from fine (from 300 to 1,700 PMW)[136] to various terms of imprisonment. In addition, Article 168 of the Civil Code as of 200 provides for the possibility to protect honour, dignity and business reputation, and possible protective measures include the possibility to publish a denial, as well as imposition of fine, reparation of damages and compensation for moral harm. The conclusion that can be made is that the legal provisions on punishment for defamation are inconsistent with international standards. It is necessary to exclude imprisonment for defamation from the number of possible sanctions, tend to exclude defamation from the number of criminal offences, and reconsider the amounts of fines so as to not discourage journalists from covering issues of public interest.

[133] See above, UNHRC, General Comment no. 34 – Article 19, para. 47.
[134] *Bladet Tromsø and Stensaas v. Norway*, Application No. 21980/93, ECtHR judgment of 20 May 1999, para. 64.

[135] See above, UNHRC, General Comment no. 34 – Article 19, para. 47.
[136] For the calculation of fines determined by the Penal Code, in 2012: 1 PMW = 12.6 roubles (see the Law on the Republican Budget for 2012, as of 7 December 2011, N 227-З-V (САЗ 11-49), Article 53 (2) letter з)). Consequently, the fines amounted from 3,780 to 21,420 roubles. According to the Transdniestrian Republican Bank weighted average exchange rates in April 2012: EUR 1 = 14.7559, USD 1 = 11.2000, <http://www.cbpmr.net/resource/svcmonthapril2012.pdf>. Accordingly, the sizes of fines in April 2012 constituted from EUR 256 to EUR 1,451 or from USD 337.5 to USD 1,912.5. For comparison, the average wage in January-February 2012 was 3,126 roubles, i.e. about EUR 212.27 or USD 280.36 (*Cost of Living*, newspaper "Profsoyuznye Vesti" of 01 April 2012, <http://profvesti.org/2012/04/01/7905/>).

3. Conclusions

3.1. General Conclusions and Recommendations

120. The Constitution of the Left Bank region contains general norms related to the freedom of expression. Also, the region has developed specialised legislation in the form of the Law on Mass Media and other normative acts. These documents, among other issues, regularise the issues of establishment, registration, re-registration and liquidation of media outlets.

121. The analysis of this general and special legislation, done within this study, showed that many of its provisions combine both norms consistent with international standards and norms inconsistent with them. The norms that are inconsistent with international standards hinder the realisation of the freedom of expression in practice. Authorities should confirm their commitment to the obligation to *ensure* this freedom and eliminate the obstacles contained in the legislation. These steps would considerably increase the possibility of a full and efficient exercise of the freedom of expression. For this, it would be necessary to bring the legislation in compliance with international standards, taking into consideration the conclusions of this study.

122. Thus, the law does not indicate the authority that must be addressed in order to register mass media, which is a significant gap in the information on the registration procedure. At the same time, the former Law on the Press and Other Means of Mass Communication, which was in force prior to the current Law on Mass Media, directly indicated that applications for mass media registration were to be submitted to the Committee on Television, Radio and Press of the Supreme Council of the Transdniestrian Moldavian Republic.[137] Therefore, clear indication of the name of the registering authority in the old law and inexistence of just as clear indication in the current law are indicative of deterioration of the legislation on mass media.

123. It should also be noted that the legislation regarding the freedom of association is not always accessible and understandable in connection with several factors. Firstly, the analysed documents contain references to a completely different legislation, and not to certain normative acts. This circumstance considerably hinders understanding and performance of registration procedures by persons lacking knowledge in the field of law. This problem can be overcome for example by indicating references to specific normative acts and transferring into the Law on Mass Media the necessary provisions from other normative acts.

124. Secondly, a systemic problem is the general difficulty to access the texts of the normative acts currently in force in the region. Normative acts are published in printed

[137] The Law on the Press and Other Means of Mass Communication as of 16 March 1993 (C3MP 93-1), Article 8 (2), became inoperative since the Law on Mass Media as of 11 April 2003 came into force.

"Compilations of Legislative Acts" (CLA), but the region has no publicly accessible reliable electronic database of normative acts, amendments and additions to them, placed in the Internet. We are living in the era of information technologies, and life requires a fast access to information, including the socially significant information – the legislation. This problem can be solved by developing and placing in the Internet a publicly accessible website with permanently updated, systematised database of all normative acts of the region's central authorities.

3.2. Summary of the Main Conclusions of the Study

125. Article 27 of the Constitution stipulates provisions protecting the freedom of expression, and although this article does not directly mention mass media, the freedom of expression covers and protects them. Also, not all constitutional restrictions of the freedom of expression fully comply with international standards.

126. The ***founders*** of mass media can be natural and legal persons – commercial enterprises, public associations, religious organisations and political parties, as well as central and local government authorities.

127. The general restriction of the possibility to be founder of a media outlet for ***all citizens servicing prison sentences under court conviction*** is controversial, as the question appears about the necessity of such a general ban.

128. The restriction of the possibility to be founder of a media outlet for ***organisations whose activity is prohibited by law*** is apparently connected with the fight against extremism. It is necessary that the prohibition of activity of an organisation be subject to judicial control and that this decision be consistent with justified limitation of the freedom of expression and/or freedom of association in the presence of conclusive evidence that the prohibition of activity of such an organisation is truly necessary.

129. Full prohibition for ***foreign citizens and stateless persons that do not permanently reside in the Left Bank region*** on the possibility to be founders of mass media will most likely be inconsistent with international standards, since it is unclear the protection of what legitimate aim is sought by this ban, and it will unlikely meet the criterion of necessity in a democratic society.

130. ***Information about the registration procedure*** is not fully accessible, since the law does not clearly indicate the name of the registering authority (the Law on the Press and Other Means of Mass Communication had a direct indication of the name of the registering authority), and there are questions regarding the calculation and payment of the State duty for mass media registration.

131. The ***registration procedure*** as it is described in the Law on Mass Media appears to be not quite understandable, as the text of the law does not specify the authority to which the application for registration must be submitted, and the terms of issuance of the document confirming mass media registration are not obvious.

132. The following conclusions can be made regarding the ***formal requirements for registration***. Firstly, although the list of documents that must be submitted for registration is closed, the legislation admits appearance of unduly broad discretionary powers. Secondly, problems may arise with the document on the payment of the State duty. Thirdly, although the requirements for the list of information and documents for registration are practicable, the question arises of the necessity of these requirements. It appears that the list of documents submitted with the application for mass media registration must be reconsidered and shortened. Also, it is recommended to replace the permissive procedure for mass media registration by notification.

133. The registration of mass media in the Left Bank region is charged with a ***State duty***, which is allowed by international standards. However, it is inconsistent with international standards that the information about the State duty is not accessible, since the Law on Mass Media makes a general reference to the legislation of the Left Bank region, and not to a certain normative act regulating the issues of State duty payment; moreover, it is difficult to determine the manner of calculation of the State duty. For this reason a person without special knowledge in the field of law or finances is unlikely to be able to independently determine the size of the duty. The amount of the duty itself is not an obstacle for mass media registration. Another positive aspect is that when determining the size of the duty, the legislation makes a difference between exclusively commercial and socially oriented media, for which the duty is smaller.

134. ***Refusal to register mass media*** must be produced in written form and be motivated – it is one of the important safeguards against arbitrary refusal to register a media outlet.

135. Mass media can be refused registration "if the information in the application is inconsistent with the real state of affairs." This formulation can in some cases be too general and vague. The interpretation of this phrase can be beyond what is provided by law, which can lead to violation of the freedom of expression.

136. Also, mass media can be refused registration "if the name, approximate topics and/or specialisation of the media outlet are an abuse of the freedom of the press." When deciding on "abuse of the freedom of the press" by the registered media outlet, authorities should proceed from convincing and compelling reasons, and not from "mere suspicion about true intentions" of the media outlet's founder.

137. All reasons for ***returning the application for mass media registration*** are in principle not inconsistent with international standards, and their fulfilment can be determined by the need to maintain public order and to protect the rights of others.

138. The Law on Mass Media prescribes the need for actual ***re-registration*** in several cases, and it occurs in the same manner and within the same time limits as the registration of mass media. Therefore, the comments and conclusions made above for the procedure of mass media registration apply for re-registration as well. At that, justice authorities must not require media outlets to repeatedly submit information or documents which did not change from the moment of initial registration.

139. A very positive example is that the change of the location of the editorial office and the frequency of issue of mass media do not require re-registration of the media outlet; it is only necessary to notify about it the registering authority in writing within one month. It is recommended to introduce re-registration by notification only in case of fundamental changes (e.g. when changing the title).

140. ***Decision on refusal to register*** mass media, violation by the registering authority of the procedure and terms of registration, other misconduct of the registering authority, as well as the decision on annulling the broadcasting licence can be challenged in court, which is consistent with international standards. However, at that it is necessary to ensure reasonable terms of examination of such complaints so as to guarantee the right to fair trial and effective remedy.

141. The Left Bank region's legislation provides for several actions that can lead to actual ***termination of activity of mass media***: 1) direct termination of activity; 2) temporary suspension of activity; and 3) invalidation of mass media registration certificate.

142. Grounds for terminating the activity of a media outlet that are contained in the legislation can at first glance be considered justified, since they can be necessary, for example, to protect public order and national security and to prevent crimes. However, it is always necessary to consider the last step of the three-step test, namely whether in each particular case the termination of a media outlet's activity is necessary in a democratic society and a proportionate measure.

143. Another problem can be in the interpretation of the above prohibited goals. Thus, the activity of a media outlet can be terminated according to the procedure and reasons prescribed by the Law on Counteraction to Extremist Activities. Fight against various forms of extremism is pressing and necessary, for they are in contradiction with the values of democracy and human rights, and often even admit or directly contribute to violence. However, the problem with the Law on Counteraction to Extremist Activities consists in the highly extensive definition of extremism, which entails the possibility of a broad interpretation of legal provisions and, therefore, the possibility of abuse and unacceptable restriction of human rights, including violation of the freedom of expression, particularly in the form of termination of media outlet's activity. It is necessary that such reasons be clearly defined.

144. Authorities should not terminate the activity of a media outlet for failure to execute a prior court order on suspension of activity of this outlet. In this regard, a more appropriate sanction would be imposition of a fine on this media outlet, since this sanction will perform the function of punishment and at the same time will be less restrictive of freedom of expression. Thus, termination of activity of the media outlet in this case can be recognised as a measure disproportionate to the goal pursued and lead to a violation of the freedom of expression.

145. The last instance of actual termination of activity of mass media is ***invalidation of the mass media registration certificate***, which occurs only by judicial procedure. Mass media registration certificates are invalidated in case media outlets fail to begin production within one year from the date they receive certificates. This situation is inconsistent with international standards, since this provision is unlikely to comply with the criterion of

necessity in a democratic society. Also, it is inconsistent with international standards that a mass media registration certificate is invalidated in case a media outlet fails to approve its Statute or the contract replacing it, as it would be a measure disproportionate to the aim pursued.

146. In the Left Bank region, radio and television broadcasting requires a **license**. To assess the compliance of radio and television licensing in the Left Bank region with international standards, it is insufficient to examine only the standards of the current legislation; it is also necessary to examine the practice of licensing, which is beyond the scope of this study.

147. The Left Bank region's legislation specifies the **languages** that must be used by official mass media: Moldavian, Russian, and Ukrainian. It also provides for the possibility to use other languages. The law does not regularise the use of languages by privately owned media outlets, nor does it contain mandatory languages for privately owned media or mandatory proportions for the use of languages in mass media. Thus, mass media can themselves determine the language (languages) for publication and broadcasting depending on the needs of their audience and of the media market. Besides, national and linguistic minorities can establish their own media outlets, which can publish/broadcast in their languages. Thereby, the provisions of the legislation regarding the use of languages in the media generally comply with international human rights standards.

148. The Left Bank region's legislation directly prohibits **censorship**, and in this regard complies with international standards. At the same time, it would be useful to monitor the situation in practice.

149. When registering mass media, authorities collect information about the founders of media outlets and about their links with other registered media outlets and with the media market. At the same time, the Left Bank region's legislation apparently has no provisions on the protection of mass media from **monopolization** and other above-mentioned threats. Therefore, legal provisions in the field of prevention of monopolization and undue concentration of mass media are inconsistent with international standards and require further development.

150. The provisions of the Left Bank region's legislation on punishment for **defamation** are inconsistent with international standards. It is necessary to exclude imprisonment for defamation from the number of possible sanctions, tend to exclude defamation from the number of criminal offences, and reconsider the amounts of fines so as to not discourage journalists from covering issues of public interest.